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### Divorce and Remarriage in the Old Testament

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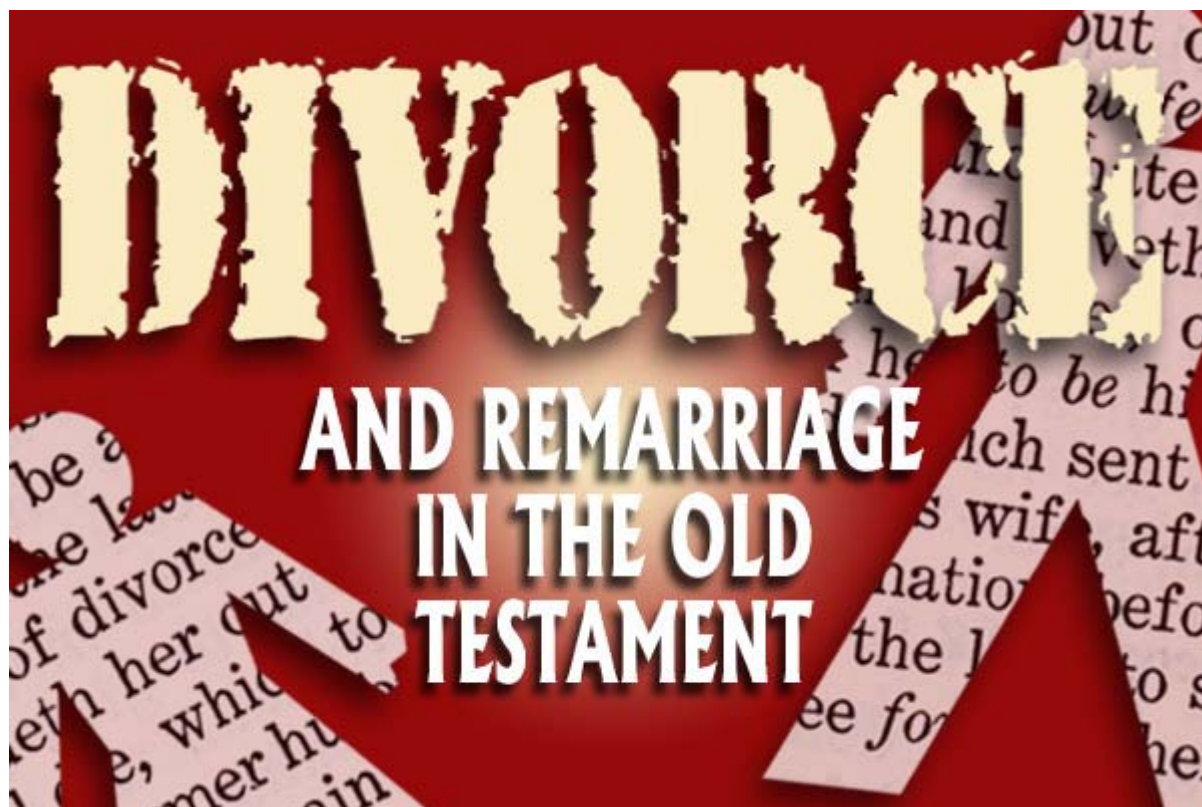
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***Close examination of Deuteronomy 24:1-4 sheds light on an important social issue in today's culture.***

**By Richard Davidson**

The wide range of Old Testament passages related to the issues of divorce and remarriage includes at least six Hebrew expressions referring to divorce that occur altogether some 27 times, plus several references to remarriage. This article will limit itself to the most seminal passage dealing with divorce and remarriage, Deuteronomy 24:1-4. It contains far-reaching implications for understanding New Testament passages on the subject and for properly recognizing the interpretive relationship between Old Testament and New Testament divorce/remarriage legislation.

Crucial grammatical, syntactical, and intertextual features of

the legislation have been largely overlooked in previous studies of the passage. Yet these features provide keys for understanding the continuity between the Testaments with regard to the subject of marriage and divorce.

## **Historical Background and Literary Context**

The Book of Deuteronomy encompasses Moses' farewell sermon to Israel, given about 1410 B.C. on the borders of Canaan just before Moses' death and Israel's entrance into the Promised Land. The address is framed in the overall structure of a covenant renewal. It follows the essential outline of the international suzerainty-vassal treaties of the day.

Within this overall structure, Deuteronomy 24 is situated as part of the specific stipulations of the covenant, Deuteronomy 12–26. This whole body of material is arranged as an expansion and application of the Decalogue of Deuteronomy 5, with the various laws grouped within topical units that follow the content and sequence of the corresponding commandments of the Decalogue.<sup>1</sup>

What is particularly noteworthy for our study at this point is that Deuteronomy 24:1-4 is not placed in the section of the Deuteronomic law dealing with adultery, but in the section dealing with theft. This fact must be kept in mind in seeking to understand the underlying purpose of the legislation.

## **Translation**

Deuteronomy 24:1-4 reads as follows: "[1]When a man takes a wife and marries her, if then she finds no favor in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house, [2] and if she goes and becomes another man's wife, [3] and the latter husband dislikes her and writes her a bill of divorce and puts it in her hand

and sends her out of his house, or if the latter husband dies, who took her to be his wife, [4] then her former husband, who sent her away, may not take her again to be his wife, after she has been defiled; for that is an abomination before the Lord, and you shall not bring guilt upon the land which the Lord your God gives you for an inheritance'" (RSV, verses marked).

### **Literary Form and Structure**

Some earlier English translations of this passage (e.g., KJV, ERV, and ASV) are misleading, because they have the actual legislative portion beginning already with verse 1: "Then let him write her a bill of divorcement" (KJV). If such were the correct translation, then God indeed would be sanctioning divorce in this passage. But it is now universally recognized that the form or genre of this law and the details of Hebrew grammatical structure lead to a different understanding.

In the legal portions of the Pentateuch, there are two major literary types of laws: demonstrable laws and case laws. In the former, there is an absolute command or prohibition: "Thou shalt . . ." or "Thou shalt not . . ." In the latter, the case laws, there is first the description of condition(s), usually beginning with Hebrew words best translated as "If . . ." or "When . . ." This is followed by the actual legislation, best signaled in English translation by the word "then . . ." Following the description of condition(s), a case law (as well as demonstrable law) sometimes has one or more motive clauses giving the rationale for the law.

Deuteronomy 24:1-4 is a case law that has all three elements just described. In verses 1-3 there are several conditions: the grounds and procedure for divorce (vs. 1), the remarriage of the woman (vs. 2), and the divorce or the death of the second husband (vs. 3). Only after describing all of these conditions in verses 1-3 does verse 4 include the Hebrew word for "not," signaling the start of the actual legislation. The only

legislation in this passage is in verse 4a, forbidding the woman's former husband to take her back to be his wife under the circumstances described in verses 1-3.

The implication is clear: God is in no wise legislating or even sanctioning divorce in this passage. In fact, the whole passage may be expressing tacit disapproval, although the divorce is tolerated and not punished. This will become more evident in further detail.

Following the conditions and the legislation of Deuteronomy 24:1-4a is the third major part of the case law, the motive clauses of verse 4b, containing the multiple rationale for the prohibition: The woman has been "defiled," it would be an "abomination" before the Lord, and "sin" should not be brought upon the land. These all call for attention in order to understand the purpose of the legislation.

## **Circumstances of Divorce/Remarriage**

*Grounds for Divorce (vs. 1a).* Deuteronomy 24:1 describes two conditions that lead the husband to "send away" or divorce his wife. First, "'It happens that she finds no favor ["approval" or "affection"] in his eyes.'"<sup>2</sup> The phrase "to find" or "not to find favor in one's eyes" is the ordinary Hebrew expression for "like/dislike" or "please/displease." It describes the subjective situation—the husband's dislike, displeasure, or lack of approval/affection for his wife.

But the grounds for divorce are not limited to the subjective element. There are also concrete grounds for the disapproval: "'Because he has found some indecency in her'" (NASB). The Hebrew word may be translated literally as "nakedness of a thing." But to what does it refer? This question has been widely debated among scholars, both ancient and modern. The correct interpretation of this Hebrew phrase was at the heart of the Pharisees' test question to Jesus in Matthew 19:3: "'Is it lawful

for a man to divorce his wife for just any reason?" (NKJV). In Jesus' day, two interpretations of Deuteronomy 24:1 vied for attention. The School of Shammai emphasized the word for "nakedness," and interpreted the phrase to refer to marital unchastity, while the School of Hillel emphasized the word for "thing," and interpreted the phrase to refer to any indecency or anything displeasing to the husband, even for such things as serving poor food in a meal.

The word for "nakedness" elsewhere in the Old Testament most often refers to the nakedness of a person's private parts or genitals, which should not be uncovered or exposed to be seen by those who should not see them; and the uncovering of one's nakedness usually has sexual connotations (Gen. 9:22, 23; Ex. 20:23; 28:42). The word can mean "word [speech, saying]" or "thing [matter, affair]," and in the context of Deuteronomy 24:1 surely means "thing" or "matter."

This phrase occurs only once in the Old Testament besides Deuteronomy 24:1, and that is in the previous chapter, 23:15 (Eng. vs. 14). Here it clearly refers to the excrement mentioned in the previous verse that should be covered so that the Lord "'may see no unclean thing among you, and turn away from you'" (vs. 13). The "nakedness of a thing" is something that is uncovered that should have been covered, something that is repulsive, disgusting, or shameful when left exposed.

It appears that this phrase in Deuteronomy 24:1 has a similar meaning as in the preceding chapter, but refers to the "nakedness of a thing" with regard to a wife. It seems probable, given the preceding context, and the usual sexual overtones of the term when referring to a woman, that the phrase in Deuteronomy 24:1 describes a situation of indecent exposure (of private parts) on the part of the woman. Theoretically, the phrase could probably include illicit sexual intercourse (i.e., adultery), in parallel with the phrase "uncover nakedness," describing such

behavior in Leviticus 18 and 20.

However, since adultery (and other illicit sexual intercourse) received the death penalty (or being “cut off” from the congregation) according to the law (Deut. 22:22; Lev. 20:10-18), the indecent exposure referred to in Deuteronomy 24:1 must be something short of these sexual activities, but a serious sexual indiscretion nonetheless. The phrase in Deuteronomy 24:1 describes some type of serious, shameful, and disgraceful conduct of indecent exposure probably associated with sexual activity, but less than actual illicit sexual intercourse.

What is the implication of this conclusion about the meaning of “shameful uncovering” in Deuteronomy 24 for the answer that Jesus gives to the Pharisees in Matthew 19 regarding the grounds for divorce? Jesus states only one legitimate ground for divorce: *porneia* (vs. 9; 5:32). To what does this word refer when used without any qualifiers in the context? Its parallel usage (again without qualifiers) in Acts 15, and the intertextual allusions to Leviticus 17 and 18 in this latter passage, provide helpful guidance here.

Acts 15 lists four prohibitions for Gentile Christians given by the Jerusalem Council: “That you abstain from things offered to idols, from blood, from things strangled, and from sexual immorality [*pornea*]” (vs. 29, NKJV). Particularly striking is that this is the same list, in the same order, as the four major legal prohibitions explicitly stated to be applicable to the stranger/alien as well as to native Israelites in Leviticus 17 and 18. In these Old Testament chapters we find (1) sacrificing to demons/idols (Lev. 17:7-9); (2) eating blood (vss. 10-12); (3) eating anything that has not been immediately drained of its blood (vss. 13-16); and (4) various illicit sexual practices (Leviticus 18).

In this clear case of intertextuality, the Jerusalem Council undoubtedly concluded that the practices forbidden to the alien in Leviticus 17 and 18 were what should be prohibited to Gentile

Christians in the church. The parallel of the fourth prohibition in each passage is unambiguous: what Acts 15 labels *porneia* are those illicit sexual activities included in Leviticus 18. These activities may be summarized in general as illicit sexual intercourse—including incest, adultery, homosexual practices, and bestiality. The correlation between Acts 15 and Leviticus 17 and 18 seems to provide a solid foundation for determining what the early church understood by the term *porneia*.

This inner-biblical definition of *porneia* seems to be decisive in understanding Jesus' "exception clause" regarding divorce on grounds of *porneia* in Matthew 5:32; 19:9. Jesus' "exception clause" is stricter than the grounds for divorce presented in Deuteronomy 24:1 (according to the interpretation of both the House of Shammai and the House of Hillel). Jesus' "exception" for divorce is *porneia*, which is not the exact equivalent of the "shameful uncovering" of Deuteronomy 24:1. *Porneia* is a much narrower term, referring exclusively to illicit sexual intercourse, which in the Mosaic law called for the offender being "cut off" from God's people (Lev. 18:29). As Roy Gane summarizes: "Jesus says that whereas Moses allowed for divorce for indecent exposure without illicit sexual relations, He permits divorce only if illicit sexual relations take place."<sup>3</sup>

Furthermore, in this light, Jesus' "exception clause" in Matthew 5 and 19 does not contradict the Synoptic parallel accounts in Mark and Luke, which contain no exception clause. Mark and Luke do not mention any exception clause presumably because they do not consider the case of *porneia*, the penalty for which was being "cut off" or death. It was assumed that the death penalty or being "cut off" from the congregation meant a *de facto* dissolution of the marriage. Matthew apparently preserves the original intent of Jesus for readers after 30 A.D., when the death penalty for adultery was abolished.

R. H. Charles writes: "When we recognise that Mark's



narrative takes no cognisance of the case of adultery, but only of the other and inadequate grounds advanced for divorce, the chief apparent contradictions between Matthew and Mark cease to exist. What is implicit in Mark is made explicit in Matthew. Both gospels therefore teach that marriage is indissoluble for all offences short of adultery. . . . Now, it was impossible to misinterpret the plain words of Christ, as stated in Mark, at the time they were uttered, and so long as the law relating to the infliction of death on the adulteress and her paramour was not abrogated. But, as we know, this law was abrogated a few years later. The natural result was that to our Lord's words, which had one meaning before the abrogation of this law, a different meaning was in many quarters attached after its abrogation, and they came to be regarded as forbidding divorce under all circumstances, though really and originally they referred only to divorces procured on inadequate grounds "that is, grounds not involving adultery."<sup>4</sup>

*Procedure of Divorce.* According to Deuteronomy 24: 1b, there were three major elements in the divorce proceedings. First, the husband wrote a "certificate of divorce," literally "document of cutting off." Other legal documents are mentioned in the Old Testament, and the certificate of divorce is also alluded to in other passages. Although there is no Old Testament example of the actual wording of such a document, it has been suggested that the central divorce formula is contained in Yahweh's statement of divorce proceedings against Israel in Hosea 2:2: "'she is not My wife, nor am I her Husband!'" Such a statement would mean the legal breaking of the marriage covenant as much as the death of the marriage partner. The document no doubt had to be properly issued and officially authenticated, thus ensuring that the divorce proceedings were not done precipitously.

The bill of divorce may have also contained what in Rabbinic

times was considered "the essential formula in the bill of divorce," i.e., "Lo, thou art free to marry any man."<sup>5</sup> This would provide for the freedom and right of the woman to be married again. The document would be indicating that although the woman had been guilty of some kind of indecent exposure, she was not guilty of adultery or other illicit sexual intercourse, and therefore not liable to punishment for such sexual activity. Thus she was protected from abuse or false charges by her former husband or others at a subsequent time.

Parallels from the Code of Hammurabi and the Jewish Mishnah indicate that the certificate of divorce would also contain mention of the financial settlement, unless the woman was guilty of misconduct, in which case no financial compensation was awarded her. Probably the latter (no financial compensation) was the case in Deuteronomy 24:1.

The second step of the divorce proceedings was to put "it [the bill of divorce] in her [the wife's] hand" (Deut. 24:1). She must actually receive notice of the divorce directly in order for it to be effective. The Mishnah tractate Gittim deals with various kinds of possible situations that might not qualify as actually putting the divorce certificate in the hand of the woman. The effect, again, is the protection of the wife by ensuring that she has access to, and concrete notification of, the divorce document.

The third step is that the husband "sends her out of his house" (vs. 1). The Hebrew word for "send" is elsewhere in the Old Testament the closest one to a technical term for divorce. Sending the wife away is intended to effectuate the divorce process. The break is final and complete.

*Remarriage and the second divorce or death of second husband.* The third condition specified in Deuteronomy 24:1-3 is that the divorced woman remarries, and then her second husband either divorces her or dies.

Raymond Westbrook seeks to establish that the grounds for

the second divorce are not the same as those for the first divorce. The second husband is said to “detest” or “dislike” or “hate” her, which term is not employed in the grounds for the first divorce.<sup>6</sup> The evidence Westbrook cites, however, actually militates against his conclusion, for he shows that in ancient Near Eastern sources and later Jewish material the formula “I hate my husband/wife” is a summary of the longer standard divorce formula “I hate and divorce my husband/wife.” Westbrook’s argument that “hate/dislike” in Deuteronomy 24:3 refers to divorce without objective grounds in contrast to divorce with objective grounds in verse 1, while plausible, is not persuasive. In light of the fact that this technical term is used elsewhere to summarize the grounds for divorce, whatever they might be, it seems preferable to take *hate/dislike* as summarizing the same situation as the first divorce mentioned in verse 1.

The divorce procedure is the same as described in verse 1: The husband writes his wife a certificate of divorce, puts it in her hand, and sends her away out of his house. Or, as an alternative situation, the second husband dies.

## Legislation

After the lengthy statement of conditions, the legislation itself is short and simple: “‘then her former husband who divorced her must not take her back to be his wife after she has been defiled’” (Deut. 24:4). Though the legislation is clear, the rationale for this legislation is far less certain. Already in the legislation, however, one part of the rationale is given: “‘after she has been defiled.’” Two additional aspects of the rationale for the prohibition appear in the motive clauses.

## Rationale for the Legislation: The Motive Clauses

*The explanation:* “‘After she has been defiled.’” The first indicator of the reason for this legislation comes in the

explanation why the first husband is not permitted to remarry: “‘she has been defiled’” (vs. 4). The Hebrew for this clause is translated “to be or become unclean or defiled.” But the grammatical form employed in this verse is very unusual in the Hebrew Bible, used nowhere else in this way and only a very few times with a very few verbs. This form is passive, and it normally conveys the reflexive idea (“she defiled herself”). Deuteronomy 24:4 would probably best be translated as “she has been made/caused to defile herself.”

This leads clearly to Leviticus 18, where we have not only the reflexive form of this word (vss. 24, 30), but the other two terms/concepts used in the motive clauses of Deuteronomy 24:4: the term *abomination* (vss. 22, 26, 29) and the idea of bringing defilement/sin upon the land (vss. 25, 27, 28). Leviticus 18 is the only other chapter of the Hebrew Bible that combines these three terms/ideas in one context, and seems undoubtedly to be alluded to by Deuteronomy 24:4. It is crucial to note that in Leviticus 18 one defiles oneself by having illicit sexual relations with another (vss. 20, 24, including at least adultery, bestiality, homosexual practice). Deuteronomy 24:4 also probably alludes to Numbers 5:13, 14, 20, where the wife is specifically referred to as having “defiled herself” by having illicit sexual relationships with a man other than her husband.

The implication of this connection between Deuteronomy 24:4, Leviticus 18, and Numbers 5 is that the sexual activity of the divorced woman with the second husband is tantamount to adultery or some other illicit sexual intercourse, even though she does not incur the death penalty or other punishment as in the cases of Leviticus 18.

Various commentators have recognized this implication. “The second marriage of a divorced woman was placed implicitly upon a par with adultery.”<sup>7</sup> S. R. Driver concurs that “the union of a divorced woman with another man, from the point of view of

her first husband, [is] falling into the same category as adultery."<sup>8</sup>

If the sexual intercourse of the woman with her second husband defiles her and is tantamount to adultery, why is she free from punishment? The answer seems to be found in the meaning of "has been caused to defile herself." This apparently does not refer to the one she has had sexual intercourse with (i.e., her second husband) as the "cause" of defilement. By utilizing the passive reflexive form, another cause than the immediate defilement with her second husband seems to be implied. This is highlighted by comparing this occurrence with its other occurrences in the Hebrew Bible, where the same dynamic is functioning: The ultimate cause, seemingly implicit in this rare grammatical form, is the first husband. The legislation subtly implicates the first husband for divorcing his wife. Even though his action is not punished, and therefore is tolerated, the law makes clear that his action does not have divine approval. His putting away his wife has in effect caused her to defile herself in a second marriage in a similar way as if she were committing adultery.

Thus, while Deuteronomy 24:1-4 does not legislate divorce or remarriage, and even tolerates it to take place within certain grounds less than illicit sexual intercourse, at the same time within the legislation is an internal indicator that such divorce brings about a state tantamount to adultery, and therefore is not in harmony with the divine will.

Recognizing the correct translation of Deuteronomy 24:4 ("she has been caused to defile herself") throws light on Jesus' words in Matthew 5:32: "'I say to you that whoever divorces his wife for any reason except sexual immorality [*porneia*] causes her to commit adultery [presumably when she remarries]; and whoever marries a woman who is divorced commits adultery.'" Just as in the other "'I say unto you'" sayings of Matthew 5, Jesus

is not changing or adding something new to the Law, but showing the true and deeper meaning that is already contained in the Law, which had been distorted by later misinterpretation. Already in Deuteronomy 24:4 it is indicated that breaking the marriage bond on grounds less than illicit sexual intercourse causes the woman to defile herself, i.e., commit what is tantamount to adultery.

A further implication of this interpretation of Deuteronomy 24:4 is that Jesus, in pointing the Pharisees away from the divine "concession" in verses 1-4 to God's ideal "'from the beginning'" (Matt. 19:8), was not arbitrarily shifting from the Deuteronomic law to the Edenic ideal. He was rather pointing to a conclusion that was already implicit in Deuteronomy 24:4: Verses 1-3 were a temporary concession to "hardness" of Israel's heart, but they did not represent God's divine ideal for marriage.

*The reason: "'It is an abomination.'"* As already noted, the term *abomination*, occurring in context with the other two rationales found in verse 4, links unmistakably with Leviticus 18. As the various types of illicit sexual intercourse mentioned in Leviticus 18 are "'abominations,'" so is a woman's returning to the first husband after having been married again. If the woman's remarriage after her first divorce is similar to adultery, remarriage to her former husband is even more so. P. C. Craigie writes, "If the woman were then to remarry her first husband, after divorcing the second, the analogy with adultery would become even more complete; the woman lives first with one man, then another, and finally returns to the first."<sup>9</sup>

Furthermore, it appears that the prohibition does in effect bring indirect punishment on the first husband for divorcing his wife. Even though his divorcing her is not directly censured, yet since she "has been caused [by him] to defile herself" through his action, he is indirectly punished by not being allowed to take her as a wife again. To do such would be an "'abomination.'" Though

the punishment for failing to follow this prohibition is not given in the text, it probably may be assumed that such an abomination would not just be similar to adultery, but treated as adultery and punished accordingly.

*The command:* “*You shall not bring sin on the land.*” This last motive clause once again relates to Leviticus 18. The idea that illicit sexual intercourse defiles the land is mentioned three times in this chapter (vss. 25, 27, 28). Because the land is defiled, God says that “therefore I visit the punishment of its iniquity upon it, and the land vomits out its inhabitants” (vs. 25).

This same concept is what is found in Deuteronomy 24:4, even though the noun *iniquity* is replaced with the verbal idea of “sin” being brought on the land. The verb “*sin*” (“miss a mark,” “go astray”) may have been substituted to imply a somewhat less serious infraction than the “iniquity” [“crooked behavior,” “perversion”] of Leviticus 18, but it also may here have been considered virtually synonymous.

A man is not to remarry his wife when she has been married again to someone else for the same reason that Israel is not to engage in other illicit sexual intercourse. As we have already seen, to commit this abomination defiles the land and will eventually lead to divine punishment as He causes the land to vomit out its inhabitants.

An important implication of this motive clause for the contemporary relevance of this legislation arises from the direct linkage of Deuteronomy 24:4 with Leviticus 18 in the defiling of the land by the iniquity/sin of the sexual abominations. The “abominations” mentioned in Leviticus 18 (and reiterated in Leviticus 20) are forbidden not only for the native Israelite but also explicitly for the non-Israelite “stranger” or “alien” who sojourns among the children of Israel. Furthermore, these abominations caused the non-Israelite heathen who inhabited Canaan before Israel to be vomited out when they committed

these acts. Therefore the “abomination” and defiling quality of these acts clearly are not simply ritual in nature, applying only to Israel, but timeless and universal, applying to anyone who practices them. Since Deuteronomy 24:4 is placed in the same category as the practices of Leviticus 18, it may be assumed that the prohibition against marrying a former wife who has been married again is universal and of contemporary relevance in its application. Disregarding such prohibition will not only bring defilement and sin upon the land of Israel which God was giving to them as an inheritance, but will also defile any land where such practice is carried out.

### **Overall Purpose of the Legislation**

*Various suggestions.* There have been many suggestions as to the overall purpose of the legislation in Deuteronomy 24:1-4. Some eight major views may be categorized and summarized:<sup>10</sup>

1. To ensure the proper legal procedure of divorce. This assumes the translation of the KJV and other versions that place the condition in verse 1.

The view is based upon a misunderstanding of the structure of the passage. Deuteronomy 24:1-4 neither legislates divorce nor sanctions it. The actual legislation deals only with the prohibition of remarriage to the first husband after an intervening marriage. In fairness to this view, however, it must be said that the very mention of the certain conditions in the divorce proceedings does at least indicate that these conditions would have to be met in order for the legislation to apply. In the very toleration of divorce under these conditions, some tacit recognition of a set procedure for divorce is made in the passage.

2. To discourage easy divorce. As Jay Adams puts it: “The whole point of the four verses in question is to forestall hasty action by making it impossible to rectify the situation when divorce and remarriage to



another takes place."<sup>11</sup>

This view has more to commend it. The mention of specific divorce proceedings in the legislation would have some tacit influence to this effect, but the actual legislation would have further underscored this point. When a divorce was contemplated by the first husband, he must reckon with the fact that such action would be final once his wife had remarried. He could never change his mind and try to woo her back. But Westbrook points out a weakness in this being the only purpose for the legislation: "the divorcing husband is hardly likely to have in mind the possible circumstances following the dissolution of a subsequent marriage by his wife."<sup>12</sup>

3. To inhibit remarriage. Craigie argues that the text treats subsequent remarriages as defilements similar to adultery. He regards the grounds for the divorce as possibly just some type of "physical deficiency in the woman." The legislation restricts current divorce practices so that it does not become simply a "'legal' form of committing adultery."<sup>13</sup>

The third view contains elements that find support in the text. Craigie is correct to argue that the remarriage of the woman (after a divorce on lesser grounds than extramarital sexual intercourse) is presented as tantamount to adultery in that she "defiles herself" (although she is not punished). He is also on the right track in seeing the legislation as curbing the excesses of divorce so that it becomes "legalized adultery." But Craigie broadens the meaning far too much when he sees it probably referring to a "physical deficiency" in the woman and not "indecent exposure." He also misses the implication that it is the first husband who is ultimately culpable for having caused his wife to defile herself by the second marriage relationship.

4. To protect the second marriage. Reuven Yaron suggests that the legislation inhibits the social tensions that might arise from a "lovers' triangle."<sup>14</sup>

This view also has merit. If the divorced wife who has married again knows that she cannot get back together with her first husband, she would certainly be discouraged from planning any intrigue against her second husband so he would divorce her. The first husband would likewise be prevented from trying to get his first wife back. Although these aspects seem to be part of what the law accomplished, Laney has correctly pointed out that this view "fails to explain why the rule would apply after the death of the second husband when the second marriage would no longer be in jeopardy."<sup>15</sup>

5. To prevent a "type of incest." Gordon Wenham argues that marriage creates a kind of indissoluble "kinship bond" between husband and wife, and thus after a divorce and remarriage to return to the first husband is a kind of incest, which is forbidden in Leviticus 18:6-18.<sup>16</sup>

This view does not have the weight of evidence of the text and context to support it. As Laney remarks, "The major difficulty with this view is that it seems to reach beyond what is clear to the reader. One wonders how many Israelites would have seen the connection between the 'one flesh' of the marriage union and the incest laws of Leviticus 18:6-18."<sup>17</sup> Westbrook moves closer to the main objection to Wenham's "type of incest" view, asserting that, "his analysis cannot possibly apply to the Deuteronomic law because it completely ignores the intervening marriage. The law does not, as Wenham assumes, prohibit remarriage as such, and there is no way that we can see of the second marriage being a factor in the creation of an incestuous affinity."<sup>18</sup> The major problem of Wenham's position, as hinted already by Westbrook, is that it is founded on an erroneous view of the marriage covenant. Wenham assumes that the "one-flesh" relationship in the marriage covenant is absolutely indissoluble, even by divorce and remarriage. Such a position is not supported in Genesis 1–3 or anywhere else in Scripture.

6. To “protect a stigmatized woman from further abuse by her offending first husband.”<sup>19</sup> “Deuteronomy deals not with a sinning wife but a sinning husband.”<sup>20</sup> In his view, the wife’s action was not a sexual offense at all but some “embarrassing condition,” and the husband was “so hard-hearted that he cast the woman from himself” and “so unrepentant that he allowed her to be sexually coupled to another man.”<sup>21</sup>

This view has many points that square with our exegesis. William Luck is correct that the law implicates the first husband as the offending party.<sup>22</sup> He states: “the stigma [of ‘defilement’] of the woman in Deuteronomy 24:4 does not so stigmatize her that the moral guilt hangs about her marriages to men other than her former husband. The stigma instead reflects back upon the man who caused the problem, that is, her first husband.”<sup>23</sup> In emphasizing the first husband’s culpability, however, Luck has tended to trivialize the grounds for divorce by indicating that Deuteronomy 24:1 simply refers to “embarrassing circumstances,” instead of “indecent exposure.”

7. To recognize the “natural repulsion” or taboo against having sexual intercourse with a woman who has cohabited with another man. This view has found support in Calum Carmichael, who seeks to show evidence that such an attitude did exist in ancient Israel.<sup>24</sup>

This view does not stand up to a rigorous scrutiny. Westbrook concludes: “We would suggest that, far from there being a natural repulsion, both biblical and ancient Near Eastern sources find nothing untoward in a man resuming relations with his wife after she has had relations with another, even amounting to marriage, providing no other factor makes resumption of the marriage improper.”<sup>25</sup>

8. To deter greedy profit by the first husband. Raymond Westbrook contends that this legislation is about property. In the first divorce (vs. 1) since there were moral grounds, the wife

received no financial settlement, whereas in the second divorce (vs. 3) there were no moral grounds so the wife received financial remuneration. The legislation is to keep the first husband from profiting twice, once to divorce her (and give her nothing) and once to remarry her (and get her financial settlement from her second husband). Westbrook notes how this interpretation fits nicely with the structural placement of this law in the section of Deuteronomic legislation dealing with theft.<sup>26</sup>

This view points in a promising direction, although it appears to go beyond the evidence in its specifics. Westbrook's distinction between two kinds of divorce functioning in Deuteronomy 24:1-3 finds its basis in a similar distinction in the Code of Hammurabi and the Mishnah, but really has no basis in the biblical text. As we have already seen, the divorce formula of verse 3 is probably an abbreviated version of the same type of divorce in verse 1. Westbrook's view, in addition to being speculative, does not appear to take seriously enough the terms "abomination" and "sin on the land" (of verse 4). Furthermore, this view assumes that the first divorce is perfectly legitimate, contrary to what we have seen implied in the clause "she has been caused to defile herself."

Aside from the weakness of Westbrook's proposal in its details, he does seek to make sense out of the placement of this law within the section of Deuteronomy 12–26 dealing with "theft." If it does not deal with theft in the way that Westbrook suggests, Westbrook must be credited with attempting to wrestle with the larger issue of the theological context for this legislation.

These considerations lead to an understanding of the relationship between this legislation and theft in a much larger perspective than Westbrook proposes. The law of Deuteronomy 24:1-4 has prevented men from treating a woman as mere chattel, property, to be swapped back and forth at will. Her dignity and value as an individual person is upheld in this law,

and the first husband who caused her to defile herself is implicitly shown to be at fault. The law is aimed, in its final placement within the larger context, to protect the woman from being robbed of her personhood.

This is reinforced by noticing the very next law in this section of Deuteronomy (24:5): "'When a man has taken a new wife, he shall not go out to war or be charged with any business; he shall be free at home one year, and bring happiness to his wife whom he has taken.'" This law clearly indicates that its ultimate purpose is to enable the newly wedded man to stay at home "'and bring happiness to his wife.'" The law protects against robbing the newly married couple of their intimacy and happiness, and especially protects the happiness of the wife.

This leads to an understanding of how Deuteronomy 24: 1-4 fits into the progression of thought in the section of laws dealing with the eighth commandment or "theft." As Kaufman pointed out with regard to the organization of the various laws within the thought units of a given commandment, they "are arranged according to observable principles of priority."<sup>27</sup> Kaufman's analysis of the Deuteronomic laws arranged under the eighth commandment is insightful. He notes how there are six paragraphs in this section (which he labels A through F). The structure of the section begins with the theft of property (paragraphs A [Deut. 23:20, 21], B [vss. 22-24], and C [vss. 25, 26]). Then it moves to the theft of "life" in a metaphorical sense (paragraphs D [24: 1-5] and E [vs. 6]). Finally it deals with the theft of the physical (kidnapping, paragraph F [vs. 7]).

Kaufman has rightly pointed out how Deuteronomy 24: 1-4 belongs together with verse 5 as one paragraph with a common theme: "Perhaps the current position of paragraph D within Word VII [the eighth commandment] offers an insight into the compiler's (or author's) understanding of the very essence of the two laws which comprise it. Both, like paragraph E and F that

follow, were apparently seen as preventing the theft of nepeç—of the services and devotion of a groom to his bride, and of the self-respect of a divorced woman.”<sup>28</sup>

Therefore Deuteronomy 24:1-4, in its larger canonical context, serves to protect the rights of women, to protect their dignity and self-respect, especially in circumstances in which they may appear powerless. The law, in its self-expressed disapproval—although temporary toleration, of inequalities afforded women due to the hardness of men’s hearts—points toward the day when such inequities will be resolved by a return to the Edenic ideal for marriage.

### **Implications for the 21st Century**

Although Deuteronomy 24:1-4 tolerated divorce on the grounds of indecent exposure on the part of the wife, at the same time within the legislation is a rare internal indicator that such a divorce does not meet with divine approval. The husband’s putting away his wife has in effect caused her to defile herself in a second marriage in a similar way as if she were committing adultery (although it is not punished as such because the blame is placed upon the first husband and not the wife). Thus already in verse 4 it is indicated that the breakage of the marriage bond on grounds less than illicit sexual intercourse causes the woman to defile herself, i.e., commit what is tantamount to adultery (when she marries again).

The correct translation of verse 4 (“she has been caused to defile herself”) seems to illuminate Jesus’ words in Matthew 5:32: “Whoever divorces his wife for any reason except sexual immorality [illicit sexual intercourse] causes her to commit adultery [presumably when she remarries].” Thus Matthew 5:32 is not an exception to the rule of Jesus’ “But I say unto you” statements in Matthew 5. Here, as elsewhere in the chapter, He is not changing the Old Testament meaning but recovering its full

force from later misinterpretation.

The grounds for divorce in Deuteronomy 24:1 lie behind Jesus' discussion with the Pharisees in Matthew 19. The School of Shammai interpreted "the nakedness of a thing" to mean "indecent exposure [including adultery and other illicit sexual intercourse since these did not often meet the death penalty by the time of his day]" and the School of Hillel interpreted the grounds to be any indecency even as trivial as a wife's spoiling the husband's food. Jesus' "exception clause" is stricter than both Shammai and Hillel, including only *porneia* as legitimate grounds for divorce.

In light of the precise structural and content parallels between the prohibitions of Acts 15:29 and Leviticus 17–18, *porneia* in Acts 15 (and presumably also Matt 5:32 and 19:9) may be understood as referring to illicit sexual intercourse (as detailed in Leviticus 18, including at least incest, adultery, homosexual practices, and bestiality).

Jesus' grounds for divorce (*porneia*) are the equivalent of those practices that in the Old Testament met with the death penalty or being "cut off." Therefore it may be stated that Jesus' exception clause in Matthew is not in contradiction to the lack of the exception clause in the other Synoptic gospels. Mark and Luke do not have the exception clause, presumably because such exception was assumed (via the death penalty or being "cut off" and thus *de facto* dissolving of the marriage) in Old Testament law. Matthew has the exception clause to preserve the meaning of Jesus' words in a setting in which the death penalty for *porneia* was no longer in effect.

The legislative part of Deuteronomy 24:1-4, which prohibited a wife to return to her first husband after she had subsequently married (and then the second husband had either died or divorced her), is linked by crucial terminology and concepts to the permanent and universal legislation of Leviticus 18,

and therefore should be considered of contemporary relevance in its application today.

Deuteronomy 24:1-4, seen in its larger context in the Book of Deuteronomy, constitutes legislation to promote and protect the rights of women and their dignity and self-respect. In its tolerance of, but self-expressed disapproval of, inequities afforded women due to the hardness of men's hearts, this law points toward the day when such inequities will be resolved by a return to the Edenic pattern for marriage.

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